Exhibit JFF-7T

BEFORE THE WASHINGTON STATE
UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition of	)	
	)	**DOCKET NO. UT-033044**
QWEST CORPORATION	)	
	)	
To Initiate a Mass-Market Switching	)	
And Dedicated Transport Case	)	
Pursuant to the Triennial Review	)	
Order	)	

RESPONSE TESTIMONY

OF

JOHN F. FINNEGAN

ON BEHALF OF

AT&T COMMUNICATIONS OF THE PACIFIC NORTHWEST, INC., AT&T LOCAL SERVICES ON BEHALF OF TCG SEATTLE, AND TCG OREGON (COLLECTIVELY "AT&T")

TRIGGER NOMINEE ANALYSIS

February 2, 2004

REDACTED VERSION
CONFIDENTIAL AND HIGHLY CONFIDENTIAL
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I. INTRODUCTION

Q. WHAT IS YOUR NAME AND BUSINESS ADDRESS?

A. My name is John F. Finnegan. My business address is 1875 Lawrence Street, Room 1525, Denver, Colorado 80202.

Q. HAVE YOU ALREADY FILED TESTIMONY IN THIS PROCEEDING?

A. Yes. I filed direct testimony and exhibits on December 22, 2003.

Q. WHAT IS THE PURPOSE OF YOUR RESPONSE TESTIMONY?

A. My response testimony presents my analysis and conclusions regarding the switching trigger analysis conducted by Qwest witnesses Reynolds and Shooshan. Specifically, I explain why the Commission should not rely on Qwest's flawed trigger analysis or misuse of data since doing so could wrongly lead to an end to both customer choice and lower prices for thousands and thousands of Washington residential and small business consumers.

Q. BASED ON YOUR ANALYSIS OF THE SWITCHING TRIGGER NOMINEES IDENTIFIED BY QWEST, WHAT DO YOU CONCLUDE?

A. I conclude that Qwest has not provided the Commission a sufficient basis under the trigger portion of the FCC's impairment test (Track 1) to rebut the FCC's national finding of impairment with respect to unbundled switching for mass market customers. Indeed, a proper analysis reveals that the FCC's switching trigger tests are not satisfied in any LATA, MSA, or wire center serving area in Washington.

Q. PLEASE SUMMARIZE THE FCC'S SWITCHING TRIGGER TESTS.

A. As I discuss in more detail in my direct testimony, the FCC has established two triggers for state commissions to use to determine if CLECs in the market have actually overcome the nationally identified impairment with respect to mass market switching in a specific geographic area. The first trigger (the self-provisioning test) analyzes whether at least three competitors are actively using their own switching to serve residential and small business customers in the identified area. The second trigger (wholesale test) examines whether at least two unaffiliated wholesalers are providing unbundled switching, and whether they are willing and operationally able to meet the switching needs of all competing providers serving mass market customers in the area.[1]

[1] *In the Matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket Nos. 01-338, 96-98 & 98-147, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36 (rel. Aug. 21, 2003) ¶¶ 498-505 ("Triennial Review Order" or "TRO").

Q. DOES QWEST CLAIM THAT THE WHOLESALE TRIGGER TEST IS MET IN WASHINGTON?

A. No. Qwest only claims that the self-provisioning trigger test is met. Therefore, the Commission does not need to consider the wholesale trigger test.

Q. WHERE DOES QWEST CLAIM THAT THE SELF-PROVISIONING TRIGGER IS MET?

A. Qwest claims that the self-provisioning trigger test is met in the Seattle MSA, Tacoma MSA, and Washington state portion of the Portland-Vancouver MSA. Qwest's claim of no impairment in the Olympia, Bremerton, and Bellingham MSA is based solely on a potential deployment or Track 2 analysis. Conversely, as Drs. Selwyn and Lehr discuss, AT&T advocates using a geographic market at least as large as the LATAs. Under this approach, the self-provisioning trigger test should be examined in LATA 674 (generally the Puget Sound area including Seattle, Tacoma, Olympia, and extending to the Canadian border) and LATA 672 (generally the south-west part of the state including Vancouver and extending to the Oregon border).

Q. HOW DID QWEST IDENTIFY THE CARRIERS THEY ADVOCATE AS SELF-PROVISIONING TRIGGER NOMINEES?

A. Qwest's advocacy is very simple. Qwest argues that the analysis should be the overly simplistic exercise of finding competitors that merely:

- Own a local switch; and
- Serve a residential or small business customer in a wire center serving area in a market using that local switch.

Q. WHAT IS WRONG WITH THIS OVERLY SIMPLISTIC APPROACH?

A. It makes no economic or common sense and, more importantly, it is not what the FCC ordered.

Q. WHY DOESN'T QWEST'S APPROACH MAKE ECONOMIC SENSE?

A. As fully explained in Drs. Selwyn and Lehr's direct and response testimony, Qwest's application of the trigger analysis is flawed because it relies on inaccurate and incomplete economic assumptions, and an inconsistent and incorrect interpretation of the FCC's impairment standard. Drs. Selwyn and Lehr explain why trigger nominees should be excluded: (1) if the CLEC serves only a restricted niche or only enterprise customers, (2) if the CLEC does not serve customers over a significant portion of the geographic market, or (3) if the CLEC only competes on an intermodal basis. Further, Drs. Selwyn and Lehr demonstrate how Qwest has relied on an incomplete and inaccurate legal history of important court decisions and FCC proceedings related to the implementation of the unbundling provisions mandated by the Telecommunications Act of 1996.

Finally, Drs. Selwyn and Lehr explain why the Commission should reject Qwest's trigger analysis because it is based on the presence of miniscule actual competition spread thinly and spottily over just a modest portion of the wire centers in each market. Thus, the economists conclude, Qwest's analysis cannot rebut the national finding of impairment because Qwest does not provide a sound economic basis to conclude that competitive entry using UNE-L is real, or even reasonably possible, throughout each market.

Q. FROM YOUR POLICY PERSPECTIVE, WHAT DOES COMMON SENSE TELL YOU?

A. From my perspective, the trigger test adopted by the FCC is predicated on the notion that if three CLECs are actually actively competing in a market without using unbundled switching, then other competitors would likewise be unimpaired competing without access to unbundled switching. But this notion only makes sense if the CLECs are, in fact, actively competing and offering true choices for customers throughout the defined market. Because if UNE-P is abandoned and the trigger nominees cannot offer true choice to all customers by using UNE-L throughout that market, there could be a lot of customers left without real competitive choices. These unfortunate customers would be left to deal with a single, monopoly provider as the only real option for basic local exchange service. I think it defies reality and economic facts to simply assume a provider who serves a handful of customers in a small number of wire centers could economically serve thousands of customers in dozens of wire centers.

Q. DID THE FCC UNDERSTAND THIS REALITY?

A. Yes. That is why they did not order state commissions to simply mindlessly count switches – a process advocated by Qwest before the FCC,[2] a process then specifically rejected by the FCC, and, indeed, a process the FCC could have readily done itself had the FCC believed it was appropriate.

Q. SO WHAT CRITERIA DID THE FCC ORDER STATE COMMISSIONS TO USE TO DETERMINE IF A CARRIER SHOULD BE A TRIGGER NOMINEE?

A. As I discussed in my direct testimony, in addition to the criteria used by Qwest, to qualify as a trigger a carrier must meet <u>all</u> of the following criteria:

- Be a true alternative competitor by
  - Being unaffiliated with the ILEC or another trigger nominee;
  - Competing on a normal for-profit basis;[3]
- Be actively providing true alternative services;

[2] *See* **Exhibit JFF-8** (A letter from Qwest to the FCC advocating the overly simplistic approach of counting switches.)
[3] TRO, ¶ 499.

- To a competitively-significant and growing number of customers;
- Throughout the geographic market;
- To all mass market customers – both small business and residential;[4] **and**

- Be likely to be able to sustain and maintain that competitive presence.[5]

Q. SHOULD THE COMMISSION TREAT CABLE TRIGGER NOMINEES DIFFERENTLY FROM NOMINEES THAT USE UNE-L?

A. Yes. While the TRO does not preclude cable companies from being considered as potential trigger nominees, it requires state commissions to take a close look to determine whether they should actually be counted toward the triggers. The TRO makes it clear that nominees that are not relying on the use of the ILEC loop should be given less weight in determining whether CLECs in general are impaired without unbundled local switching.[6] As the FCC has found:

> …both cable and CMRS are potential alternatives not simply for switching, but for the entire incumbent LEC telephony platform, including the local loop. We are unaware of any evidence that either technology can be used as a means of accessing the incumbent's wireline voice grade local loops. Accordingly, neither technology provides probative evidence of an entrant's ability to access the

[4] *Id.*
[5] TRO, ¶ 500.
[6] TRO, n. 1560 and 1572.

> incumbent LEC's wireline voice-grade local loop and thereby self-deploy local circuit switches. Rather, competition from cable telephone and CMRS providers only serves as evidence of entry using *both* a self-provisioned loop *and* a self-provisioned switch.[7]

Not counting cable companies is appropriate for several reasons. First, the national finding of impairment associated with the hot cut process is not rebutted by the presence of a CLEC that does not rely on access to incumbent loops. Second, because cable companies are often in the unique position of providing their own loop and switching, their entry strategy is not generally adoptable by CLECs. It would be unreasonable to expect CLECs to construct duplicate cable television networks in order to compete in local telephone services. Thus, except in cases where the cable company is offering services outside its facilities-based service territory, cable telephony provides no evidence of the economic viability of actual or potential CLEC competition for mass market customers. In other words, if the cable company serves exclusively in its own franchise service territory, it is unrealistic to believe such a company could or would expand beyond its existing geographic footprint to compete in the entire market, however defined. Consequently, I recommend that the Commission not count carriers that self-provide their loops toward the self-provisioning trigger.

[7] TRO, ¶ 446, footnotes omitted.

Q. DO YOU KNOW WHETHER THE TWO CABLE COMPANIES IDENTIFIED AS TRIGGER NOMINEES BY QWEST, COMCAST AND RAINIER CONNECT, SERVE TELEPHONY CUSTOMERS OUTSIDE OF THEIR CABLE FRANCHISE AREA?

A. My understanding is that Comcast provides telephony services over its own facilities only in its own service territory but that Rainier may have customers outside its cable franchise areas. I am continuing to research this issue and will supplement my testimony as necessary based on additional facts I may discover.

Q. WHAT MAY THE COMMISSION CONCLUDE IF THREE CARRIERS MEET ALL OF THE SELF-PROVISIONING TRIGGER CRITERIA IN A MARKET?

A. The FCC directed that if three carriers meet all of these criteria then, and only then, may the Commission conclude under the trigger or Track 1 analysis that mass market customers (both residential and small business) wherever located within the designated geographic area would continue to have multiple independent, competitive alternatives to the incumbent's voice grade service regardless of whether UNE-P was available. In other words, the Commission should not conclude that the triggers have been met unless it is confident that three or more competitive providers currently provide competitively meaningful service to both residential and small business customers throughout the geographic market using UNE-L.

Q. WHAT IF THERE ARE FEWER THAN THREE CARRIERS IN A MARKET WHO MEET THESE CRITERIA?

A. In that case the Commission must conclude under Track 1 that CLECs are impaired, just as the FCC did.

II. TRIGGER ANALYSIS

Q. WHO HAS QWEST IDENTIFIED AS TRIGGER NOMINEES IN WASHINGTON?

A. Qwest identified Advanced TelCom Group (ATG), Allegiance Telecom, Comcast, Eschelon, Integra, McLeodUSA, MCI, Rainier Connect, SBC Telecom, and XO as self-provisioning trigger nominees in Washington.[8]

Q. DO YOU AGREE THAT THESE CARRIERS QUALIFY AS SELF-PROVISIONING SWITCHING TRIGGERS IN WASHINGTON?

A. No. As I explain below, each and every one of these nominees fails to meet several of the necessary criteria.

[8] *See, e.g.,* Reynolds Direct Testimony at p. 31.

A. True Competitor

1. Affiliated with Qwest

Q. SHOULD ANY OF QWEST'S TRIGGER NOMINEES BE DISQUALIFIED AS AFFILIATED WITH QWEST?

A. Yes. Qwest and Allegiance Telecom recently entered into an agreement for Qwest to purchase Allegiance.[9] Execution of that agreement would result in Allegiance no longer meeting the FCC's requirement that the trigger nominee be "unaffiliated with the incumbent LEC."[10]

Q. WHEN MIGHT THE AGREEMENT BE EXECUTED?

A. The management of both Qwest and Allegiance seem eager to consummate the merger as soon as possible and have requested that the FCC consider the deal on an expedited basis. In addition, Qwest has already filed an application with the Colorado Public Utilities Commission to transfer Allegiance's assets to Qwest.[11]

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[9] See **Exhibit JFF-9** which includes the December 18, 2003 Qwest Press Release, Qwest Communications Reaches Agreement to Acquire Network Assets and Associated Revenue Streams from Allegiance Telecom, and the December 18, 2003 Allegiance Press Release, Qwest Signs Agreement to Purchase Allegiance Telecom, announcing the agreement.

[10] TRO, ¶ 499.

[11] Before the Public Utilities Commission of the State of Colorado, *In the Matter of the Transfer of Assets from Allegiance Telecom of Colorado, Inc. to Qwest Corporation and Qwest Communications Corporation and a Request for Waivers*, Docket No. 04A-034T, Notice of Application Filed, January 22, 2004.

Q. WHAT DO QWEST AND ALLEGIANCE SAY ABOUT THE TRANSACTION?

A. In discussing the agreement, Qwest's Chairman and CEO Richard C. Notebaert stated, "Upon closing of this transaction, Qwest will have more POPs that any other inter-exchange carrier in the U.S., allowing us to better serve existing customers and immediately expand our ability to serve more businesses than ever before."[12] Allegiance's Chairman and CEO stated:

> A Qwest-Allegiance pairing would dramatically increase competition in the telcom [sic] industry and would result in the first large-scale out-of-region competitor for local telephone service between the regional Bell companies – a huge benefit to medium and small businesses. This bold and strategic move by Qwest is exactly the competition that was envisioned when the 1996 Telecom Act was passed.[13]

Q. DO YOU AGREE WITH ALLEGIANCE'S PRONOUNCEMENT THAT A QWEST-ALLEGIANCE PAIRING WOULD DRAMATICALLY INCREASE COMPETITION IN THE STATE OF WASHINGTON?

A. No. Whatever the effect may be outside of Qwest's region, in-region the pairing will reduce customer choices. ***** BEGIN HIGHLY CONFIDENTIAL** [redacted]

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[12] See Exhibit JFF-9.
[13] *Id.*

[redacted] END HIGHLY CONFIDENTIAL ***

Q. HAS THE AGREEMENT FOR QWEST TO PURCHASE ALLEGIANCE BEEN APPROVED BY THE BANKRUPTCY COURT?

A. No, it has not yet been approved and there remains the possibility that the agreement may fall apart. In that event, some other bidder may purchase Allegiance or Allegiance may continue as an ongoing enterprise.

Q. IF THE AGREEMENT HAS NOT BEEN FINALIZED OR APPROVED, WHY SHOULD ALLEGIANCE BE TREATED AS AFFILIATED WITH QWEST?

A. As an initial matter, even Qwest believes the deal will close in 2004. Qwest reported, "If Qwest is successful in the bidding process, the company expects to close on the transaction in 2004."[14] In discussing the states' trigger analysis, the FCC stated: "The key consideration to be examined by state commissions is whether the providers are currently offering and able to provide service, and are likely to continue to do so."[15]

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[14] *Id.*
[15] TRO, ¶ 500.

The question facing the Commission is whether Allegiance is likely to continue to provide service as an unaffiliated carrier. Allegiance and Qwest are both working to ensure that the answer to that question is "no," and that Allegiance will be acquired by Qwest in 2004. Given that Qwest and Allegiance both view the acquisition as likely in 2004, it would be reasonable for the Commission to conclude that Allegiance is unlikely to provide service to mass market customers as an unaffiliated carrier. Consequently, Allegiance should not "count" as a self-provider of mass market switching.

Q. WHAT IF THE DEAL DOES NOT GO THROUGH?

A. If it ends up that Qwest does not purchase Allegiance, then Qwest always has the option of petitioning the Commission under the FCC's "Continuing Review" requirement.[16] Conversely, if the Commission counts Allegiance as a qualifying trigger nominee and the deal is ultimately consummated, the Commission may have prematurely removed unbundled switching based on inaccurate information, and at an extremely high cost to continuing competition in Washington.

[16] TRO, ¶ 526.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS THUS FAR.

A.

Trigger Analysis Summary I - Table 1

Trigger Nominee	**Does Nominee Meet Criteria?**
	Affiliate
ATG	
Allegiance Telecom	**NO**
Comcast	
Eschelon	
Integra	
McLeodUSA	
MCI	
Rainier Connect	
SBC Telecom	
XO	

2. <u>Competing on a Normal For-Profit Basis</u>

Q. ARE ALL OF THE TRIGGER NOMINEES COMPETING ON A NORMAL FOR-PROFIT BASIS?

A. No. SBC Telecom did not enter the market in Washington based solely on a rational economic belief that it could overcome the impairments to a UNE-L entry strategy and be profitable. In reality, the most important reason SBC Telecom is in the state of Washington has everything to do with the Merger Agreement in the SBC/Ameritech merger and nothing to do with an effort to actively provide voice service to mass market customers using its own switch.

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Q. PLEASE EXPLAIN WHY SBC IS IN THE WASHINGTON MARKET.

A. SBC Telecom is a wholly owned subsidiary of SBC Communications that was formed in the fall of 1999 as a condition of SBC's merger agreement with Ameritech. As part of its merger approval, SBC made specific commitments to provide local telephone services in 30 markets outside of its 13-state region, including Washington. Specifically, SBC agreed to do the following in those out-of-region markets:

- Install a local telephone company exchange switch;
- Provide facilities-based local exchange service to at least one unaffiliated business customer or one non-employee residential customer in that market. The term "facilities-based service" means service provided by SBC utilizing its own switch;
- Collocate facilities in at least 10 wire centers that can be used to provide facilities-based service to customers served by those wire centers; and
- Offer facilities-based local exchange service to all business and residential customers served by the wire centers in the market where SBC is collocated.

Q. WHAT HAPPENS IF SBC DOES NOT MEET THESE REQUIREMENTS?

A. Failure to meet the FCC conditions could result in payment of up to $40 million for each market.[17] Obviously, a company that is subject to a multimillion-dollar penalty structure cannot be reasonably used as evidence of non-impairment by other providers, particularly when the company's "competitive activities" are as trivial as SBC Telecom's have been in Washington. Such a company would logically be willing to sustain losses due to impairment that no normal for-profit enterprise would be willing to sustain.

Q. INDEED, WITH RESPECT TO OUT-OF-REGION COMPETITIVE ENTRY, HAS SBC ONLY DONE THE BARE MINIMUM TO COMPLY WITH ITS MERGER REQUIREMENTS?

A. Yes. The available data suggests that in Washington and elsewhere, SBC Telecom never aggressively challenged local incumbents. Rather, it did the bare minimum needed to satisfy its governmental merger mandate. According to New Paradigm Resources Group, SBC Telecom installed 30 Class 5 local circuit switches in 30 cities across the nation. From those 30 markets/switches, however, SBC Telecom provisioned a total of only 5,400 access lines in service in 2002 and 6,000 access lines in service in

[17] SBC 2002 Annual Report, p. 12.

2003. Thus, by 2003, SBC Telecom had an average of only 200 access lines in service on each of its required 30 switches. Little wonder, considering SBC Telecom's nationwide sales force included only 12 people.[18]

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS THUS FAR.

A.

Trigger Analysis Summary II - Table 2

Trigger Nominee	**Does Nominee Meet Criteria?**	
	Affiliate	**For Profit**
ATG		
Allegiance Telecom	**NO**	
Comcast		
Eschelon		
Integra		
McLeodUSA		
MCI		
Rainier Connect		
SBC Telecom		**NO**
XO		

[18] CLEC Report 2004, Competitive Last Mile Providers, New Paradigm Resources Group Inc., p. 660.

B. Active Provider

1. <u>Serves a Competitively Significant and Growing Number of Customers</u>

Q. SHOULD THE COMMISSION ESTABLISH A THRESHOLD FOR THE NUMBER OF MASS MARKET CUSTOMERS A TRIGGER NOMINEE MUST SERVE?

A. Yes. A CLEC that only serves a small number or proportion of customers, or focuses only on a niche within the mass market is not serving a competitively meaningful number of customers. Thus, its presence is not meaningful evidence of non-impairment.[19] Moreover, a CLEC that lacks adequate scale in its current operations does not demonstrate a significant likelihood that it will be able to "continue" to offer facilities-based service,[20] especially in the mass market, which the FCC recognizes is characterized by both low margins and substantial churn.[21] Indeed, scale is critical in the mass market, because competitors cannot rely on long term contracts to assure that they will recover the additional costs they must incur (a large portion of which are sunk) to provide service for each individual analog loop.[22] Notably, the FCC recognizes that "if scale

[19] TRO, ¶ 438.
[20] TRO, ¶ 500.
[21] TRO, ¶¶ 471, 474.
[22] TRO, ¶ 237.

economies are present, it would be difficult for an entrant with a small market share to achieve costs as low as the TELRIC price."[23]

Q. SHOULD NICHE CARRIERS COUNT?

A. No. A carrier that serves only a niche should not be a trigger nominee unless it its demonstrated that it is capable of serving "the mass market." This is particularly important, because the FCC's test for economic impairment properly assumes that an efficient CLEC can only expect to earn the "typical revenues gained from serving the average customers" in the mass market.[24] This requirement is sensible for many reasons, not the least of which is that any other standard (particularly one based on so-called "cherry-picking") would effectively prevent most mass market customers from enjoying the benefits of competition. Although all carriers (including the ILEC) reasonably focus on attracting the highest revenue customers, no carrier can expect to win and retain a disproportionate share of the small number of high margin customers.[25] Accordingly, if a proposed "trigger" CLEC serves only customers with

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[23] TRO, n. 379.
[24] TRO, ¶ 472.
[25] For example, if the efficient CLEC needs about a 10 percent market share in order to achieve its efficient scale and only 20 percent of customers qualified as the "high revenue" segment, that carrier would need to win -- and retain -- half of all those high value customers to achieve the necessary scale. Not only is this an irrational assumption with respect to initial customer acquisitions, it is even more irrational to assume that the ILEC would not take extraordinary steps to win those customers back.

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high revenues, its existence clearly does not demonstrate that another provider could (or would) serve the mass market in general.

Q. DO YOU RECOMMEND A SPECIFIC STANDARD FOR HOW MANY MASS MARKET CUSTOMERS A CARRIER MUST SERVE TO QUALIFY AS A TRIGGER?

A. Yes. I recommend that in order to be eligible to meet a trigger, *each* nominated self-provisioning carrier should be *currently* providing service to a competitively meaningful number of customers, which, consistent with the FCC's findings in the *Triennial Review Order*, should be a minimum of three to five percent of the total mass market demand in a specific area.[26] Moreover, in order to be able to maintain the consumer benefits already achieved, those carriers should also be capable of serving the entire UNE-L and UNE-P demand already established in that same area, and be able to continue to do so for the foreseeable future.

Q. IS THIS RECOMMENDATION CONSISTENT WITH QWEST'S ADVOCACY IN THE POTENTIAL COMPETITION PORTION (TRACK 2) OF THIS PROCEEDING?

A. Yes. Qwest's determination that CLECs are not impaired is based on an assumption that a CLEC could achieve a <u>5%</u> market share of mass market

[26] TRO, ¶ 438 (finding that national facilities-based competition of three percent insufficient to demonstrate a lack of impairment).

customers in each market.[27] Indeed, if the Qwest model were run changing only the 5% market share assumption to the actual market share of the CLEC in Washington with the highest market share in either LATA the model shows substantial losses rather than profits over Qwest's assumed 25-year time horizon.

Q. IS THERE SUPPORT FOR THE MINIMUM THREE TO FIVE PERCENT MARKET SHARE CRITERIA FROM THE FCC?

A. Yes. When presented with claims that three million residential lines use competitive switches (less than 3 percent of residential voice lines), the FCC concluded that such limited penetration "does not accurately depict the ability of an entering competitive LEC to overcome the barriers to entry generated by the hot cut process, and to serve the mass market using incumbent LEC loops."[28] Thus, self-providers serving competitively insignificant numbers of mass market customers do not demonstrate any likelihood that further UNE-L entry is economically or operationally feasible. Further, the FCC stated that wireless service is not a substitute for wireline service because only 3-5% of wireless subscribers view wireless as a replacement product.[29]

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[27] *See* Copeland Direct Testimony, Confidential Exhibit PBC-4C, p. 3.
[28] TRO, ¶ 438-439.
[29] TRO, ¶ 445.

Q. APPLYING THE MINIMUM 3-5% STANDARD, IS THERE A LATA OR MSA AT ISSUE IN THIS CASE WHERE ANY TRIGGER NOMINEE COMES EVEN CLOSE?

A. No, not even close. ***** BEGIN HIGHLY CONFIDENTIAL** [redacted]

[30] Qwest ICONN Database, Viewed on January 20, 2004 at http://www.qwest.com/cgi-bin/iconn/dlc.cgi. The numbers were obtained from the column labeled, “Loops in Service.”

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[redacted] **END HIGHLY CONFIDENTIAL *****

Q. WHAT DOES THE LOW VOLUME OF LOOPS USED BY CLECS WITH THEIR OWN SWITCHES TO SERVE THE MASS MARKET TELL YOU?

A. It tells me Qwest's trigger nominees are not meaningfully serving mass market customers with CLEC owned switches. Using UNE-P, companies like AT&T and MCI can sign up thousands of mass market customers in a state in a month. ***** BEGIN HIGHLY CONFIDENTIAL** [redacted] **END HIGHLY CONFIDENTIAL *****

Q. WHAT ELSE DO THE NUMBERS SUGGEST?

A. The facts suggest that the trigger nominees have not been actively seeking new mass market customers to be served using their own switches. Those minimal quantities are not evidence of "actively providing" service to mass market customers by self-providers of switches. Some of the numbers are so low I would find it easier to believe the number was a result of an error with Qwest's data than evidence that the carrier is actively providing voice service to mass market customers using its own switch.

Q. IF THE COMMISSION ADOPTS WIRE CENTERS AS THE MARKET, IS THE MINIMUM 3-5% THRESHOLD MET ANYWHERE IN WASHINGTON FOR ANY CLEC?

A. Yes, out of the seventy-four wire centers in LATA 672 and 674, there is one CLEC in one wire center where the CLEC share of the total loops in service exceeds 3-5%. As can be seen in Highly Confidential Exhibit JFF-10HC, in the Olympia/Evergreen wire center, there is one CLEC that has achieved a market share of over 5% of the total number of loops in the wire center. However, that is the only CLEC providing service to mass market customers in that wire center. In only three of seventy-four wire centers (Kent O'Brien, Tacoma Fawcett and Vancouver Oxford) have the CLECs collectively obtained between 2% and 2.7% of the total loops in service. CLECs have obtained between 1% and 2% of the total loops in service in only eleven of the seventy-four wire centers (Bellevue Sherwood, Seattle Atwater, Seattle Campus, Seattle Cherry, Seattle Duwamish, Seattle East, Seattle Elliott, Seattle Lakeview, Seattle Main, Seattle Sunset and Vancouver North).

Q. IF THE COMMISSION ADOPTS AT&T'S RECOMMENDED CROSS-OVER POINT WILL THAT CHANGE THIS ANALYSIS?

A. It might, but not significantly. The analysis described above was run based on "mass market lines" as that term is currently defined. I do not have the information necessary to determine whether the trigger nominee market share of the business customers with 4 (the cross-over point that Qwest used to identify mass market loops) to 12 (AT&T's proposed cross-over point) lines per premises is greater or less than their market share of business customers with 1 to 3 lines per premises. Depending on the answer to that question the numbers could well shift, but it would be very unlikely to shift to anything close to the FCC's minimum 3-5% threshold per trigger nominee. Unfortunately, the data to do that analysis are simply not available at this time.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS THUS FAR.

A.

Trigger Analysis Summary III - Table 4

Trigger Nominee	**Does Nominee Meet Criteria?**		
	Affiliate	**For Profit**	**Sig. # Cust.**
ATG			**NO**
Allegiance Telecom	**NO**		**NO**
Comcast			**NO**
Eschelon			**NO**
Integra			**NO**
McLeodUSA			**NO**
MCI			**NO**
Rainier Connect			**NO**
SBC Telecom		**NO**	**NO**
XO			**NO**

2. Serves Throughout the Market

Q. SHOULD A COMPETITIVE SWITCH PROVIDER SERVING AN AREA SMALLER THAN THE DEFINED GEOGRAPHIC MARKET AREA COUNT TOWARD MEETING THE TRIGGER?

A. No. According to the FCC, each carrier that "counts" toward the trigger must be "serving mass market customers in a particular market with the use of [its] own switch[]."[31] Based on the consumer welfare mandates of the *Triennial Review Order* discussed below, a carrier reaching customers only in an area smaller than the defined geographic market does not qualify as a trigger. In that circumstance, there is no reasonable

[31] TRO, ¶ 501.

expectation that all customers within the defined area will have the benefit of multiple, alternative sources of facilities-based competition.[32]

Q. STARTING WITH THE LATA-LEVEL MARKET PROPOSED BY AT&T, HAS QWEST DEMONSTRATED THAT THERE ARE ANY SELF-PROVIDERS OF SWITCHING ACTIVELY SERVING MASS MARKET CUSTOMERS ACROSS THE WIRE CENTERS IN LATA 674?

A. No. There are sixty-seven wire centers in LATA 674 (generally the area around Puget Sound including Seattle, Tacoma, and Olympia). Highly Confidential Exhibit JFF-10HC shows that in the vast majority of the sixty-seven wire centers there are less than three nominees identified and in over half of the total wire centers (thirty-four) there is not even one nominee present. Table 5 below breaks down the serving area of each trigger nominee. ***** BEGIN CONFIDENTIAL** [redacted]

[32] Drs. Selwyn and Lehr explain in further detail in their direct and response testimony why a trigger nominee must serve at least a substantial portion of the market before it is reasonably counted as a trigger.

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Q. WITH RESPECT TO LATA 672, HAS QWEST DEMONSTRATED THAT THERE ARE ANY SELF-PROVIDERS OF SWITCHING ACTIVELY SERVING MASS MARKET CUSTOMERS ACROSS THE APPLICABLE WIRE CENTERS?

A. No. There are seven wire centers in LATA 672 (generally the area in south-west Washington near the Oregon border including Vancouver). There is only one wire center in LATA 672 served by three self-provisioning trigger nominees and the majority of wire centers (4) are served by none of the trigger nominees. Table 6 below breaks down the serving area of each trigger nominee. Since no carrier serves even the majority of the LATA, no trigger nominee meets the requirement that they serve throughout this market.

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Q. NOW LOOKING AT THE MSA-LEVEL MARKETS PROPOSED BY QWEST, ARE THERE TRIGGER NOMINEES WHO SERVE THROUGHOUT THE SEATTLE MSA?

A. No. There are twenty-six wire centers in the Seattle MSA. Of those twenty-six, there are eight (or over 30%) with no trigger nominee present at all. Table 7 below breaks down the serving area of each trigger nominee. In this MSA no trigger nominee meets the requirement that they serve throughout this market. There are only two nominees that even serve more than half of the wire centers and those two do not even serve two-thirds. As for the eight wire centers that are not served by a single trigger nominee, the Commission must assume in this part of the analysis that the absence of UNE-L competitors shows the existence of impairment in those areas. Given that impairment presumption, eliminating UNE-P would virtually eliminate the competitive choices for over 175,000 customer lines in the Seattle MSA alone, and would be likely to remove the scale and scope economies allowing competitors to serve customers throughout the market.

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Q. WHAT IS THE ANALYSIS IN THE TACOMA MSA?

A. There are no trigger nominees who serve throughout the Tacoma MSA. There are sixteen wire centers in this MSA. ***** BEGIN CONFIDENTIAL** [redacted]

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Q. WHAT ABOUT VANCOUVER?

A. There are no trigger nominees who serve throughout the Vancouver MSA. There are only five wire centers in this MSA. Two of the four trigger nominees only serve one of the five wire centers. The other two serve three of the five, or 60%. Most importantly, there are two wire centers served by none of the trigger nominees accounting for almost 17,000 customer lines. Here again, the Commission should not consider any of these trigger nominees as serving the entire market.

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Q. DOES QWEST USE OTHER EVIDENCE TO SUGGEST THAT THESE NOMINEES SERVE THE ENTIRE MARKET?

A. Yes. Qwest cites to certification filings and price lists as evidence that the trigger nominees serve in the entire market.[33] The problem with Qwest's reliance on certification filings and price lists is that those filings and lists are not evidence of actual competition. While those certification filings and price lists describe the services <u>offered</u> by a carrier, they say nothing about the services actually <u>provided</u> by those carriers. As a result, certification filings and price lists should not influence the Commission's self-provisioning trigger analysis, which is to be based on <u>actual</u> service. The legal authority to provide service does not matter if a trigger nominee is not actually serving in an area. Impairment is based on

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[33] Reynolds Direct Testimony at 31, 33, 34, and 37.

operational and economic factors on which the mere existence of a certificate or price list has no bearing whatsoever.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS THUS FAR.

A.

Trigger Analysis Summary IV - Table 10

Trigger Nominee	**Does Nominee Meet Criteria?**			
	Affiliate	**For Profit**	**Sig. # Cust.**	**Entire Market**
ATG			**NO**	**NO**
Allegiance Telecom	**NO**		**NO**	**NO**
Comcast			**NO**	**NO**
Eschelon			**NO**	**NO**
Integra			**NO**	**NO**
McLeodUSA			**NO**	**NO**
MCI			**NO**	**NO**
Rainier Connect			**NO**	**NO**
SBC Telecom		**NO**	**NO**	**NO**
XO			**NO**	**NO**

3. <u>Serves Residential and Small Business Customers</u>

Q. CAN A SWITCHING TRIGGER BE MET IF THE TRIGGER NOMINEES ARE NOT ACTIVELY SERVING BOTH RESIDENTIAL <u>AND</u> SMALL BUSINESS CUSTOMERS USING THEIR OWN SWITCHES?

A. No. As defined in the *Triennial Review Order,* the "mass market" consists of *both* residential and small business customers who can only be economically served through the use of voice grade loops.[34] The mere presence of a switch-based CLEC cannot reasonably provide evidence of non-impairment in serving the mass market unless there is evidence that it has the "ability to serve each group of customers" within the relevant geographic area.[35] In the trigger analysis or Track 1, ability is demonstrated by actual market behavior (conversely, what may occur potentially is an issue for Tack 2 or the business case analysis). Thus, without convincing proof that three viable competitors are using their own switches today to serve both residential and small business customers, the Commission should not find that the trigger has been met. Indeed, the "clear and measurable benefit to consumers" unbundling standard cannot be met if *either* residential *or* small business customers as a class are disregarded when applying the triggers.[36]

Q. ARE THERE TRIGGER NOMINEES THAT SERVE BOTH RESIDENTIAL AND SMALL BUSINESS CUSTOMERS?

A. Yes. Rainier serves both residential and small business customers and, therefore, meets this one particular criterion although, again, Rainer should not truly be viewed as a trigger nominee. McLeod serves residential as well as small business customers, however, McLeod uses a

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[34] TRO, ¶¶ 127, 459.
[35] TRO, ¶ 495.
[36] TRO, n. 1332.

variety of ways to provide service (Centrex-resale, UNE-P and UNE-L) and Qwest has not provided any evidence that McLeod uses UNE-L for its residential customers. Thus, given the data currently available, McLeod has met this criterion.

Q. WHAT ABOUT ATG AND SBC?

A. ATG and SBC both have residential and small business tariffs on file but both price residential service at the same level as they price business service. This is compelling evidence that these carriers are not in the residential market and, therefore, do not meet this criterion.

Q. IS THERE A TRIGGER NOMINEE THAT ONLY SERVES RESIDENTIAL CUSTOMERS?

A. Yes. Comcast (to the extent it is considered at all) does not serve business customers with telephony service and so does not meet this criterion.

Q. ARE THE OTHER NOMINEES EXCLUSIVELY IN THE BUSINESS MARKET?

A. Yes.

Q. WHAT ABOUT ALLEGIANCE?

A. Allegiance only provides service to small and medium business customers. Qwest's own press release announcing its agreement to purchase

Allegiance recognized that when it reported, "Allegiance offers competitive local service for medium and small business."[37] Because Allegiance is not providing service to residential customers, it fails the requirement that a trigger nominee provide service to the entire mass market.

Q. IS THE SAME TRUE FOR ESCHELON, XO, AND INTEGRA?

A. Yes. Eschelon, XO, and Integra all have similar approaches to serving customers. They primarily use their switches to serve enterprise customers through a DS1-based architecture. They do not serve residential customers. As demonstrated by the very low quantities of mass market loops they use, these three CLECs only incidentally serve POTS line customers.

Q. FINALLY, HOW ABOUT MCI?

A. MCI serves residential customers, but only through UNE-P. Thus, for purposes of the self-provisioning switch analysis, MCI does not meet this criterion.

[37] *See* Exhibit JFF-9.

Q. PLEASE SUMMARIZE YOUR CONCLUSIONS THUS FAR.

A.

Trigger Analysis Summary V - Table 11

Trigger Nominee	**Does Nominee Meet Criteria?**				
	Affiliate	**For Profit**	**Sig. # Cust.**	**Entire Market**	**Res. & Bus.**
ATG			NO	NO	NO
Allegiance Telecom	NO		NO	NO	NO
Comcast			NO	NO	NO
Eschelon			NO	NO	NO
Integra			NO	NO	NO
McLeodUSA			NO	NO	NO
MCI			NO	NO	NO
Rainier Connect			NO	NO	
SBC Telecom		NO	NO	NO	NO
XO			NO	NO	NO

C. Likely to Sustain and Expand Competitive Presence

Q. WHAT DOES IT MEAN TO BE "ACTIVELY PROVIDING" VOICE SERVICE?

A. As I discuss in my direct testimony, the "actively providing" requirement should be interpreted to mean, among other things, that any nominee CLEC must be "currently offering and able to provide service, and [be] likely to continue to do so."[38] Thus, for example, a carrier that is using its own switching only to serve "legacy" customers and not adding significant numbers of new UNE-L customers cannot be deemed to be "actively" providing service. Rather, in order to count in the trigger

[38] TRO, ¶ 500.

analysis, a carrier should be in a customer acquisition mode, focused on growing its business through expanded use of self-deployed switching capacity.

Q. ARE THERE TRIGGER NOMINEES IDENTIFIED BY QWEST THAT VIOLATE THIS CRITERION?

A. Yes. There are very good reasons to doubt whether Allegiance, SBC, Comcast and Rainier are likely to be able to sustain and expand a competitive presence in Washington.

Q. WHAT IS THE CONCERN WITH ALLEGIANCE?

A. According to Allegiance's financial reports the company is not actively seeking new mass market customers to serve using Qwest loops and its own switch. In discussing its efforts to control network expenses, Allegiance stated:

> We are performing an extensive review of our network architecture and a rationalization of the overall profitability of our business on a collocation, market, and product basis. As such, *we may decommission a collocation arrangement*, rebuild or replace infrastructure facilities and reduce or sell entire markets. In addition, we may eliminate some products and service currently offered. As a result of such events, we may be able to reduce our future network costs. With respect to the implementation of this review and rationalization, *we may convert a limited number of facilities-based customers to UNE-P*, deploy alternate unbundled network element applications, or, in some instances, *eliminate a*

> *collocation*, product or service completely.[39]
> (emphasis added)

The decommissioning of collocation arrangements and the migration of facilities-based customers to UNE-P herald less use of Qwest loops and Allegiance's switch for mass market customers – not more.

Q. DO YOU HAVE FURTHER QUESTIONS ABOUT WHETHER ALLEGIANCE IS PLANNING ON MAINTAINING ITS MARKET PRESENCE IN WASHINGTON?

A. Yes. I believe Allegiance's reported reduction in headcount generally, and the sales force specifically, also point to less use of Qwest loops and Allegiance's switch to serve mass market customers. Allegiance reported:

> As a result of our transition from rapid revenue growth to a plan geared towards reducing cash used in operations and achieving positive cash flow, we reduced headcount, including the number of sales teams during the second half of 2002 and the first three quarters of 2003. Our total headcount decreased from 4,198 at September 30, 2002 to 2,912 at September 30, 2003. *As of September 30, 2003, the sales force, including sales managers and sales administrators, had decreased to 793 from 1,290 as of September 30, 2002.*[40]

[39] Allegiance Telecom, Inc., 10Q Report, For the Quarterly Period Ended September 30, 2003, p. 31.
[40] *Id.* p. 35.

The combination of network cost reduction and a reduction in the sales headcount by over 38% makes it less likely, not more, that Allegiance will be "actively serving" mass market customers in the future.

Q. SIMILARLY, HAS SBC TELECOM PUBLICLY "SCALED BACK" ITS MINIMAL COMPETITIVE ACTIVITIES?

A. Yes. Shortly after "entering" its out-of-region markets, SBC Telecom began scaling back its plans:

> **<u>SBC Telecom, the out-of-region arm of SBC, is in trouble.</u>**
>
> In less than a year, the organization has hired, and in recent weeks fired, hundreds of employees. Grand plans for the development of facilities-based operations, offering local voice and data services in multiple markets, have been slimmed to the bone. Provisioning has been a nightmare, central offices have been hard to secure and salespeople charge that they were asked to sell services that were not available.[41]

Q. WHAT DOES SBC'S PLAN APPEAR TO BE?

A. SBC has recently announced a "new" national strategy to utilize a digital connectivity and Voice over Internet Protocol ("VoIP") technology to provide data and voice services outside of its region. As SBC explained:

> VoIP could be introduced anywhere, just by purchasing special access [i.e. a DS1 or T-1] from carriers – ILECs or CLECs. This approach is a lot easier than trying to enter

[41] Lost Giant, Kirk Laughlin, America's Network, 5/15/2001, Vol. 105 Issue 8, p 34.

> another ILEC territory with traditional circuit switched service.[42]

Even in the IP-based arena, however, SBC still shows an unwillingness to undertake entry plans that (like a CLEC UNE-L business plan) must be executed on a central office-by-central office basis. One SBC executive was quoted recently as stating that SBC is "not looking to move forward with Centrex IP; we have put that on a sales hold," explaining that IP Centrex services had to be deployed on a central office-by-central office basis, "and there is a fair [capital expenditure] associated with that."[43]

Q. WHAT CONCLUSIONS CAN YOU DRAW ABOUT SBC?

A. Whether SBC Telecom's "VoIP strategy" ultimately proves as empty as its circuit-switched "national local" plan remains to be seen. What is clear, however, is that its current UNE-L activities cannot plausibly be deemed "active competition" for mass market services.

Q. WHY DO YOU THINK COMCAST IS NOT LIKELY TO REMAIN AN ACTIVE COMPETITOR?

A. It is far from clear that Comcast will continue offering POTS service in the future. Indeed, Comcast has been reporting a decaying telephony base

[42] Communications Daily, December 10, 2003 (quoting SBC Senior Vice President Dorothy Atwood).
[43] SBC To Take VoIP Nationwide, XCHANGE, January 2004, available online at http://www.xchangemag.com/articles/411buzserv1.html (quoting Marianne Gedeon, SBC's director of voice data convergence).

for several quarters, refuting the notion that it is actively providing POTS services.[44] Around the time of the announcement of Comcast's planned acquisition of AT&T Broadband, it was reported:

> AT&T/Comcast should pass about 11.2 million telephony ready homes by the end of the year [2002]. Comcast, which is currently pushing video-on-demand, has been targeting telephony for 2003. "They're not touching circuit switched telephony with a 10-foot pole…They'll maintain what AT&T has done because….the expense has already been incurred" [quoting Kenneth Goodman of the Yankee Group]. That expense doesn't include buying switches, which Comcast has repeatedly disdained.[45]

By the end of 2002, Comcast's intention to essentially abandon the analog telephony business became even clearer with the report that:

> Comcast will reverse AT&T Broadband's aggressive telephony acquisition policies and implement its own corporate policy of trailing and then deploying voice over IP services, a senior executive said today. AT&T enlisted more than 1 million telephony customers using conventional constant bit rate [CBR] phone technology. Comcast will maintain these customers, but it won't go looking for more, John Alchin, Comcast's executive vice president and treasurer, said during a luncheon presentation at the Warburg Media day in New York city. "There is an element of cutback on telephony," said Alchin, discussing Comcast's plans to spend more than $2 billion to upgrade AT&T Broadband plant next year. "While we haven't yet shared with you the details of

[44] Comcast Reports Third Quarter 2003 Results, October 30, 2003 Financial Tables, Table 6, viewed at http://media.corporate-ir.net/media_files/irol/11/118591/Earnings_3Q/3q03.htm on January 21, 2004.
[45] January 7, 2002 Telephony Online "Comcast Pulls Telephony Turnaround." To the extent that Comcast offers VoIP based services in the future, such services are unlikely to satisfy the FCC's requirements concerning quality, cost and maturity for some time.

> the capital plans for 2003, you should not expect us to take the telephony product into a whole host of new markets. It will be a case of supporting the product where it is today without expanding.[46]

Q. HAS COMCAST DEMONSTRATED THAT IT IS CUTTING BACK ON SERVING RESIDENTIAL CUSTOMERS?

A. Yes. During the first quarter of 2003, Comcast announced that the "number of Comcast Cable phone subscribers is expected to remain flat or decline by up to 150,000 during 2003."[47] In its Third Quarter 2003 Results, Comcast further reiterated its retrenchment from the provision of cable telephony utilizing circuit switched technology. "As a result of the Company's reduced marketing efforts and focus on telephone service profitability, Comcast now expects to lose approximately 175,000 Comcast Cable phone customers this year, a modest adjustment from the original expectation of up to 150,000 telephone customer decline [announced in the February 27, 2003 guidance]."[48] Given that Comcast reported 1.42 million telephone subscribers at the end of the first quarter

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[46] Comcast Curtailing AT&T Telephony Deployments, December 12, 2002, Telephony Online.
[47] *See* http://www.cmcsk.com/phoenix.zhtml?c=118591&p=irol-newsArticle&t=Regular&id=445839&.
[48] 3 Q Earnings Release, October 30, 2003, at http://www.cmcsk.com/phoenix/zhtml?c=118591&p=irol-newsArticle&t=Regular&id=464588&.

in 2002, a decline of 175,000 lines represents a reduction of over 12.3% in their total telephone lines.[49]

Q. WHAT CONCLUSIONS CAN YOU DRAW ABOUT COMCAST'S LONG TERM PROSPECTS AS A SERIOUS MASS MARKET TELEPHONY COMPETITOR IN WASHINGTON?

A. Given that Comcast is retreating from actively providing voice service to mass market customers in the handful of Qwest wire centers that overlap with its cable footprint, it is quite unlikely that Comcast would spend the money to offer service outside of those few Qwest wire centers.

Q. FINALLY, WHAT EVIDENCE DO YOU HAVE THAT RAINIER CONNECT MAY NOT BE A ROBUST COMPETITOR IN THE FUTURE?

A. It appears that Rainier Connect is backing off of its strategy of overbuilding Qwest facilities and so is not likely to continue to actively provide or expand service in the future. In a 2002 press release, Rainer Connect stated:

> Rainier Services are not, however, available to everyone on South Hill. We have built into all sorts of neighborhoods and developments. Overbuilds are expensive and we no longer do them unless there are sufficient pre-sales to justify.

[49] *Id.*

> The company has invested over $10 million in property, plant and equipment in the competitive services provided in Graham and Eatonville. We began our competitive ISP in 1994, cable business in 1996 and our competitive phone service in 1998 and are yet to generate a profit.[50]

A public declaration that the overbuilding has ceased and that the existing services are unprofitable do not suggest that Rainier Connect is "actively providing" service to mass market customers.

III. <u>OTHER ISSUES</u>

Q. OTHER THAN NOTING THE PRESENCE OF CLEC SWITCHES, WHAT OTHER EVIDENCE OF FACILITIES-BASED COMPETITION DOES QWEST RELY ON?

A. Qwest witness Reynolds cites a confidential report of E9-1-1 records from Intrado,[51] number porting statistics,[52] DS-0 UNE loops,[53] NPA/NXX codes assigned to CLECs,[54] and CLEC collocations.[55] He argues that these data show widespread competition from CLECs using their own switches.

[50] The Rainier Group Press Release, Local Telecommunications Company – The Rainier Group, Released July 19, 2002.
[51] Reynolds Direct Testimony at p. 21-23.
[52] *Id.* at p. 24.
[53] *Id.* at p. 25.
[54] *Id.* at p. 25-26.
[55] *Id.* at p. 26-28.

Q. ARE THESE REPORTS AND STATISTICS USEFUL IN A TRIGGERS OR TRACK 1 INQUIRY?

A. No, at least not in the way Qwest has presented the data. The focus of the self-provisioning trigger analysis phase of the proceeding (Track 1) must be on the <u>actual competition</u> provided by <u>the trigger nominees</u>.[56] Competition from carriers who are not trigger nominees simply has no role in the Track 1 analysis under the FCC's order. With the exception of the exhibit detailing the NPA/NXX data, Qwest does not separate the data associated with the trigger nominees from the data associated with all other CLECs. Thus, the vast majority of that information is not useful for the Commission in the process of evaluating triggers. Further, any part of that data relating to trigger nominees that might somehow be useful cannot be separated from the aggregated data in the form it was provided by Qwest.

Q. ARE THESE REPORTS AND STATISTICS FOCUSED ON MASS MARKET CUSTOMERS?

A. No, and this is another serious problem with the data. With the exception of the DS-0 loop information, all of the reports and statistics cited by Mr. Reynolds make no distinction between carriers or facilities used to serve enterprise customers and those used to serve mass market customers. This

[56] TRO, at ¶¶ 461, 498.

is problematic because there are a number of carriers who exclusively serve enterprise customers or who only incidentally serve the mass market. Since the scope of the inquiry in this case is limited to the mass market, this problem further diminishes the usefulness of these reports and statistics.

Q. CAN YOU GIVE SOME EXAMPLES?

A. Yes. Mr. Reynolds provides evidence regarding the number of CLEC NPA/NXX codes but makes no effort to determine whether enterprise or mass market customers use those codes. In fact, there is no way of telling from NPA/NXX codes if a CLEC is currently providing service, or is even capable to providing service, to <u>mass</u> <u>market</u> <u>customers</u>. As a result, Mr. Reynolds' conclusions using the NPA/NXX codes to estimate the numbers of customers CLEC switches can serve in Washington are meaningless to this analysis.

In addition, Qwest provides evidence on the number of "Unaffiliated CLECs with Ported Numbers" and the "Gross Quantity of Ported Numbers."[57] The quantity of ported numbers will contain ported numbers for both enterprise customers and mass market customers. When a comparison is made of the "Unaffiliated CLECs with Ported Numbers" to the "Unaffiliated CLECs with Mass Market UNE-L" in Reynolds Exhibit

[57] Reynolds Direct Testimony, Exhibit MSR-4C.

MSR-4C, it can be seen that in virtually every wire center there are many more CLECs with ported numbers not providing service to mass market customers than are providing service to mass market customers. With that understanding, it is reasonable to assume that enterprise customers represent the large majority of the gross quantity of ported numbers. In any event, since the Qwest reported "Gross Quantity of Ported Numbers" include both enterprise and mass market customers, the data are useless in the trigger analysis.

Q. DOES QWEST ACKNOWLEDGE THESE ISSUES?

A. Yes and no. Qwest did acknowledge the problem with the E9-1-1 and NXX codes. However, Qwest glossed over the problem with the ported numbers. Reynolds acknowledges the "E911 records reflect all local exchange customers served (both mass market and enterprise) . . ."[58] Further, Qwest admits it cannot distinguish between "virtual" NXX codes from standard NXX codes.[59]

For the quantity of ported numbers, Reynolds did not identify that the numbers included both mass market and enterprise numbers. Instead, Reynolds attempts to have the Commission believe that the quantities of ported numbers understate the scope of facilities-based competition.

[58] Reynolds Direct Testimony at 22.
[59] *See* Qwest's Response to AT&T's Data Request No. 02-177 (Docket No. UT-033044).

Specifically, Reynolds stated, "[i]t is important to note that ported numbers do no reflect the full scope of facilities-based CLEC competition, as (for example) customers in some instances do not elect to retain their preexisting Qwest telephone number when migrating to a CLEC."[60] Instead of being forthright and identifying that the ported numbers include enterprise numbers, Qwest instead clouds the issue by generically referring to "facilities-based competition" rather than facilities-based competition serving mass market customers.

Q. GIVEN THESE SHORTCOMINGS, HOW SHOULD THE COMMISSION EVALUATE THE DATA PRESENTED BY QWEST?

A. Since the data is not limited to trigger nominees and is not limited to mass market customers, the Commission should give no weight to the confidential report of E9-1-1 records from Intrado, the number porting statistics, the DS-0 UNE loop counts, the NPA/NXX codes assigned to CLECs, or the CLEC collocation information presented by Mr. Reynolds.

[60] Reynolds Direct Testimony at p. 24.

IV. CONCLUSION AND THE FUTURE OF COMPETITION

Q. IS QWEST APPLYING THE CORRECT TRIGGER TEST IN ITS TESTIMONY?

A. No. The trigger analysis, as defined by the FCC, asks whether at least three competitors are actively using their own switching to serve residential and small business customers in the identified area. This analysis focuses exclusively on actual competition that exists today.[61] Thus, to satisfy the TRO's trigger test for unbundled switching, Qwest must present evidence of actual competition serving mass market customers. But rather than simply counting switches, which the FCC could have done itself, this Commission has authority and a duty to interpret and apply the trigger aspect of the impairment analysis for mass market switching.[62] As I explained in my direct testimony and above, the most critical area in which the Commission must exercise its judgment is in developing the quantitative and qualitative criteria it will apply to the carriers that it will "count" for purposes of meeting the triggers. Qwest must show that all of these qualifications are met before the Commission may find that the self-provisioning trigger is satisfied. The intent of the

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[61] TRO, ¶¶ 461 & 498.
[62] TRO, ¶94 ("As we examine the evidence of facilities deployment by competitive LECs in the specific UNE discussions, we will give it substantial weight, but we do not agree that we must find it conclusive or presumptive of a particular outcome without additional information or analysis".

triggers is to identify competitors who "demonstrate[] adequately the technical and economic feasibility of an entrant serving the mass market with its own switch."[63]

Q. APPLYING THE CORRECT CRITERIA TO THE SWITCHING TRIGGER NOMINEES IDENTIFIED BY QWEST, WHAT DO YOU CONCLUDE?

A. I conclude that Qwest has not provided the Commission a sufficient basis under the trigger portion of the FCC's impairment test (Track 1) to rebut the FCC's national finding of impairment with respect to unbundled switching for mass market customers in Washington, regardless of how the Commission ultimately decides to define the market.

Q. ARE THERE ANY SPECIFIC AREAS WHERE QWEST'S CASE IS MISSING CRITICAL INFORMATION?

A. Yes. I am particularly troubled by the lack of information about the number of voice customers served by the two cable company trigger nominees and the geographic dispersion of those customers. In the absence of such information, the Commission cannot conclude that either cable company should be considered a legitimate trigger in any market. Further, in any event, the cable companies cannot reasonably be relied on

[63] TRO, ¶ 510.

as triggers given the fact that they self-provision all of their own customer loops – a market entry strategy that is not economical for CLECs.

Q. DO YOU BELIEVE ANY LEGITIMATE SWITCHING TRIGGER CARRIERS EXIST IN WASHINGTON?

A. No, not at this time. Indeed, as Table 12 below reveals, every nominee fails on a number of criteria. Thus, based on the information available, a proper analysis reveals that there are no markets in Washington with even one carrier, let alone three or more, broadly serving mass market customers (both residential and small business). Therefore, based on actual competition today, there is no evidence that any market in Washington would continue to have multiple independent, competitive alternatives to the incumbent's voice grade service regardless of whether UNE-P was available.

Final Trigger Analysis Summary - Table 12

Trigger Nominee	**Does Nominee Meet Criteria?**					
	Affiliate	**For Profit**	**Sig. # Cust.**	**Entire Market**	**Res. & Bus.**	**Long Term**
ATG			NO	NO	NO	
Allegiance Telecom	NO		NO	NO	NO	NO
Comcast			NO	NO	NO	NO
Eschelon			NO	NO	NO	
Integra			NO	NO	NO	
McLeodUSA			NO	NO	NO	
MCI			NO	NO	NO	
Rainier Connect			NO	NO		NO
SBC Telecom		NO	NO	NO	NO	NO
XO			NO	NO	NO	

Q. YOUR TESTIMONY SEEMS TO PAINT A VERY BLEAK PICTURE OF MASS MARKET COMPETITION IN WASHINGTON. IS THERE NO HOPE FOR REAL CUSTOMER CHOICE FOR RESIDENTIAL AND SMALL BUSINESS CUSTOMERS?

A. Absolutely there is a great deal of hope in the form of rapidly growing and expanding UNE-P competition. As I discussed in my direct testimony, since mid-2001, UNE-P competition has grown at almost twice the rate as UNE-L competition in Washington.[64] Indeed, in the latter part of 2003 competitors added new UNE-P lines in Washington at a rate of almost 10,000 per month.[65] ***** BEGIN HIGHLY CONFIDENTIAL** [redacted]

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[64] *See* Finnegan Direct Testimony at p. 25, ll. 1-3.
[65] *Id.* at p. 25, ll. 4-7.

REDACTED

[redacted]

REDACTED

[redacted] **END HIGHLY CONFIDENTIAL ***** This is real competition that will give Washington residential and small business customers choice, help keep prices low and customer service high. That is what is at stake in this proceeding and, as such, I suppose I can understand why Qwest wants to do everything it can to get rid of UNE-P.

Q. WHAT ABOUT UNE-L COMPETITION?

A. As I discuss in my direct testimony, the current trend is for UNE-L lines to grow at a modest rate. This makes sense because there are certainly advantages to providing customers with service using one's own facilities since quality and service can be better controlled. Thus, in those atypical circumstances where a business case can be made to provide UNE-L instead of UNE-P, competitors will take advantage of that choice. However, as AT&T's witnesses in this case discuss at length, given the substantial costs currently associated with hot cuts alone for example, until it is just as easy, quick, and inexpensive to transfer customers on UNE-L as it is for UNE-P, UNE-L competition will never be as robust. This real and substantial impairment is a big reason why no carriers currently meet the trigger criteria.

Q. DOES THIS CONCLUDE YOUR RESPONSE TESTIMONY?

A. Yes.